

COURT FILE NUMBER           2003.06728

COURT                           COURT OF QUEEN'S BENCH OF ALBERTA

JUDICIAL CENTRE           EDMONTON

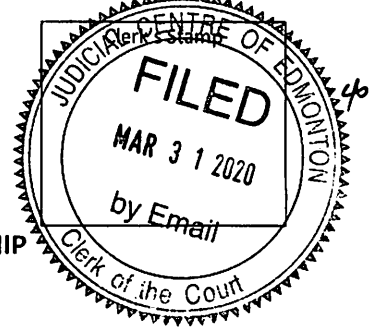
PLAINTIFF                   ROMSPEN MORTGAGE LIMITED PARTNERSHIP  
AND ROMSPEN INVESTMENT CORPORATION

DEFENDANTS                3443 ZEN GARDEN LIMITED PARTNERSHIP, LOT  
11 GP LTD., LOT 11 LIMITED PARTNERSHIP, ECO-  
INDUSTRIAL BUSINESS PARK INC., ABSOLUTE  
ENERGY RESOURCES INC., ABSOLUTE  
ENVIRONMENTAL WASTE MANAGEMENT INC.  
AND DANIEL ALEXANDER WHITE

DOCUMENT                   **STATEMENT OF CLAIM**

ADDRESS FOR SERVICE AND  
CONTACT INFORMATION OF  
PARTY FILING THIS  
DOCUMENT                   **BORDEN LADNER GERVAIS LLP**  
1900, 520 Third Avenue S.W.  
Calgary, Alberta T2P 0R3

Josef Krüger, QC/Kevin E. Barr  
Telephone: 403.232.9563/9786  
Facsimile: 403.266.1395  
Email: jkruger@blg.com/kbarr@blg.com  
File Number: 443063-000012



**NOTICE TO DEFENDANT(S):**

**You are being sued. You are a Defendant.**

Go to the end of this document to see what you can do and when you must do it.

**Note: State below only facts and not evidence (Rule 13.6)**

**Statement of facts relied on:**

**I. The Parties**

1. The Plaintiff, Romspen Mortgage Limited Partnership ("RMLP"), is a partnership created pursuant to the laws of Ontario.
2. The Plaintiff, Romspen Investment Corporation, is a corporation incorporated pursuant to the laws of Ontario.

3. For the purposes of this Statement of Claim, Romspen Mortgage Limited Partnership and Romspen Investment Corporation shall be collectively referred to as “Romspen”.
4. The Defendant 3443 Zen Garden Limited Partnership (“Zen Garden”), so far as is known to Romspen, is a limited partnership created pursuant to the laws of Texas.
5. The Defendant Lot 11 GP Ltd. (“GP”), so far as is known to Romspen, is a corporation incorporated pursuant to the laws of Alberta.
6. The Defendant Lot 11 Limited Partnership (“LP”), so far as is known to Romspen, is a limited partnership created pursuant to the laws of Alberta.
7. The Defendant Eco-Industrial Business Park Inc. (“Eco-Industrial”), so far as is known to Romspen, is a corporation incorporated pursuant to the laws of Alberta.
8. The Defendant Absolute Energy Resources Inc. (“Absolute Energy”), so far as is known to Romspen, is a corporation incorporated pursuant to the laws of Alberta.
9. The Defendant Absolute Environmental Waste Management Inc. (“Absolute Environmental”), so far as is known to Romspen, is a corporation incorporated pursuant to the laws of Alberta.
10. The Defendant, Daniel Alexander White (“White”), so far as is known to Romspen, is an individual normally resident in the Province of Alberta.

## II. The Mortgage and Security

11. Zen Garden as borrower, and RMLP, as lender, entered into a loan agreement, dated April 27, 2018, wherein Romspen agreed to advance to Zen Garden a loan up to a maximum principal sum of USD \$125,000,000.00 (the “Loan Agreement”).
12. To evidence its indebtedness under the Loan Agreement, Zen Garden gave a Promissory Note to RMLP in the maximum principal sum of USD \$125,000,000.00.
13. As security for its obligations under the Loan Agreement, Zen Garden granted, on April 27, 2018, a series of security instruments to RMLP in the State of Texas (the “Texas Security”).
14. Eightfold Development LLC (“Eightfold”) granted to Romspen a guaranty in the State of Texas, which guaranteed payment of all amounts due and owing to RMLP pursuant to the Loan Agreement and other documentation in respect of the Loan (the “Texas Guaranty”).
15. As further security for the Loan Agreement, Romspen was granted, among others, the following security instruments in the Province of Alberta:
  - (i) Mortgage from GP acting in its capacity as general partner for LP, and in its own capacity, dated April 17, 2018 in the sum of USD \$40,000,000.00;
  - (ii) Assignment of Leases and Rents from GP, dated April 17, 2018;
  - (iii) General Security Agreement from GP and LP, dated April 17, 2018;

- (iv) Mortgage from Eco-Industrial, dated April 17, 2018 in the sum of USD \$40,000,000.00;
- (v) Assignment of Leases and Rents from Eco-Industrial, dated April 17, 2018;
- (vi) General Security Agreement from Eco-Industrial, dated April 17, 2018;
- (vii) General Security Agreement from Absolute Energy, dated April 17, 2018;
- (viii) General Security Agreement from Absolute Environmental, dated April 17, 2018;  
and
- (ix) General Security Agreement from White, dated April 17, 2018.

(collectively the "Alberta Security").

16. Each of GP, LP, Eco-Industrial, Absolute Energy, Absolute Environmental and White granted to Romspen guarantees, dated April 17, 2018, for the repayment of all amounts advanced to Zen Garden pursuant to the Loan Agreement (collectively as the "Alberta Guarantees").
17. The mortgages granted by GP and Eco-Industrial (collectively as the "Alberta Mortgages") included, among others, the following terms:
  - (a) an event of a default under the Loan Agreement or the Alberta Guarantees constitutes a default under the Alberta Mortgages;
  - (b) upon a default under the Alberta Mortgages, Romspen becomes entitled, among other things, to the following relief:
    - (i) the whole of the unpaid balance of the principal advanced under the Loan Agreement and interest thereon will become due and payable;
    - (ii) Romspen shall be entitled to immediately seek the appointment of a Receiver and Receiver-Manager over the lands subject to the Alberta Mortgages (the "Lands") and add to the Alberta Mortgages all costs and expenses incurred by it in that regard;
    - (iii) Romspen shall be entitled to enter upon the Lands and make such arrangements for repairing or putting in order any building or other improvements on the Lands as it may deem expedient, with all costs, charges and expenses incurred by Romspen in doing so being secured by the Alberta Mortgages, being a charge on the subject Lands, and bearing interest at the Alberta Mortgages rate until paid;
    - (iv) Romspen shall be entitled to take such proceedings to realize on security given in respect of the Alberta Mortgages by foreclosure or otherwise; and
    - (i) Romspen shall be entitled to all fees and expenses incurred as the result of default under the Alberta Mortgages or with realizing on its security against the Lands, including legal costs on a solicitor and his own client, full-indemnity basis.

18. From time to time, Romspen advanced sums to Zen Garden pursuant to the terms of the Loan Agreement, the Texas Security, the Alberta Security, the Texas Guaranty and the Alberta Guarantees.

**III. Discharges, Default and Demand**

19. Zen Garden has defaulted under the terms of the Loan Agreement. In particular, Zen Garden failed to make payments when due and owing.

20. As a result of Zen Garden's default under the Loan Agreement, each of the Texas Security, the Alberta Security, the Texas Guaranty and the Alberta Guarantees were also in default.

21. By correspondence dated October 11, 2019, Romspen demanded that, among others, Zen Garden, Eightfold, GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial and White repay all amounts due and owing under Loan Agreement, the Alberta Security and the Alberta Guarantees, and delivered a Notice of Intention to Enforce Security pursuant to section 244 of the *Bankruptcy and Insolvency Act*, RSC 1985, c B-3, as amended (the "Demand and Notice").

22. At the time that the Demand and Notice was issued, the amount owing under the Loan Agreement totalled USD \$87,865,453.79.

23. On October 25, 2019, each of Romspen, GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial and White entered into a Consent Order, filed at the Court of Queen's Bench of Alberta – Judicial Centre of Edmonton, which, among other things, stayed any and all enforcement proceedings under the Demand and Notice.

24. In November, 2019, each of Romspen, Zen Garden, GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial and White entered into a Standstill Agreement in the State of Texas as it pertained to the continuation of proceedings in both Texas and Alberta (the "Standstill Agreement").

25. Zen Garden repeatedly breached the terms of the Standstill Agreement, the Loan Agreement, the Texas Security and the Texas Guaranty.

26. In addition, notwithstanding the terms of the Standstill Agreement, each of GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial and White continued to breach the terms of the Alberta Security and the Alberta Guarantees.

27. In November 2019, White executed a Consent Receivership Order in Texas.

28. On March 22, 2020, Zen Garden was petitioned into Involuntary Bankruptcy in the Texas Western Bankruptcy Court by its creditors:

- (i) Lyle America, Inc. d/b/a Glass.com of Illinois;
- (ii) Austin Glass & Mirror, Inc.;
- (iii) ACM Services LLC; and

(iv) Kell C. Mercer.

29. At the time of Zen Garden's Involuntary Bankruptcy, each of GP and Eco-Industrial were independently in breach of the Alberta Mortgages in that they had failed to pay outstanding property taxes totalling approximately CDN. \$800,000.00.
30. As of March 26, 2020, the amount owing to Romspen pursuant to the Alberta Mortgages and the Alberta Guarantees was USD \$96,760,975.69, with interest continuing to accrue at the rate of \$44,384.00, per diem thereafter (the "Indebtedness").
31. Despite repeated demands on the part of Romspen, Zen Garden, in breach of the Loan Agreement, the Texas Security, the Texas Guaranty and the Standstill Agreement, has failed or refused to repay the Indebtedness, in whole or in part.
32. Despite repeated demands on the part of Romspen, GP, LP, Absolute Energy, Absolute Environmental, Eco-Industrial and White, in breach of the Alberta Security and the Alberta Guarantees, have failed or refused to pay the Indebtedness, in whole or in part.

**IV. Remedy sought:**

33. The Plaintiff proposes that the trial of this Action be held at the Courts Centre, in the City of Edmonton, in the Province of Alberta.
34. The Plaintiff claims the following:
  - (a) a Declaration that Zen Garden is in default under the terms of the Loan Agreement;
  - (b) a Declaration that Zen Garden is in default under the terms of the Loan Agreement;
  - (c) a Declaration as to the amount owing under the Loan Agreement;
  - (d) a Declaration that each of GP, LP, Eco-Industrial, Absolute Energy, Absolute Environmental and White are in default under the terms of the Alberta Security and the Alberta Guarantees;
  - (e) a Declaration as to the amount owing under the Alberta Security and the Alberta Guarantees;
  - (f) judgment in an amount as may be proven, together with interest according to the terms of the Loan Agreement, the Alberta Security and the Alberta Guarantees;
  - (g) judgment for per diem amounts accruing under the Loan Agreement, the Alberta Security and the Alberta Guarantees after March 26, 2020, to the date of judgment;

- (h) a Receivership Order appointing MNP as Receiver and Manager over the assets and undertakings of each of GP, LP, Eco-Industrial, Absolute Energy, Absolute Environmental and White;
- (i) in the alternative, an Interim Receivership Order appointing MNP as Interim Receiver over the assets and undertakings of each of GP, LP, Eco-Industrial, Absolute Energy, Absolute Environmental and White;
- (j) costs payable on a solicitor and his own client, full-indemnity basis pursuant to the terms of the Loan Agreement, the Alberta Security and the Alberta Guarantees;
- (k) in the alternative, costs payable in accordance with Schedule "C" to the Alberta *Rules of Court*; and
- (l) such further and other relief as this Honourable Court deems appropriate.

#### NOTICE TO THE DEFENDANTS

You only have a short time to do something to defend yourself against this claim:

20 days if you are served in Alberta

1 month if you are served outside Alberta but in Canada

2 months if you are served outside Canada.

You can respond by filing a Statement of Defence or a Demand for Notice in the office of the Clerk of the Court of Queen's Bench at <sup>Edmonton</sup> Calgary, Alberta, AND serving your Statement of Defence or a Demand for Notice on the Plaintiff's address for service.

#### WARNING

If you do not file and serve a Statement of Defence or a Demand for Notice within your time period, you risk losing the law suit automatically. If you do not file, or do not serve, or are late in doing either of these things, a court may give a judgment to the Plaintiff against you.